

No. 16,004
United States Court of Appeals
For the Ninth Circuit

THE IDAHO FIRST NATIONAL BANK, <i>Appellant,</i>
vs.
UNITED STATES OF AMERICA, <i>Appellee.</i>

Appeal from the United States District Court
for the District of Idaho,
Southern Division.

REPLY BRIEF OF APPELLANT.

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REPLY BRIEF OF APPELLANT.

SUMMARY OF ARGUMENT.

The interest was not realized by Wendell bank.

Such interest did not escape taxation.

The liquidation of Wendell bank, being the event on which commissioner relies, does not justify the commissioner in accruing the interest income to Wendell bank.

The change sought to be made by the commissioner is not a change of method.

ARGUMENT.**THE INTEREST WAS NOT REALIZED BY WENDELL BANK.**

Interest accrues by the passage of time. It is earned by a cash basis taxpayer when it is received. In this case Wendell bank did not receive the interest. It did not receive anything for the interest. There was no economic benefit to Wendell bank by the accrual of the interest.

In this case the economic benefit accrued to the former shareholders of Wendell bank in the enhanced value of their stock. Such enhanced value was reflected in the sale price of the stock to the appellant.

SUCH INTEREST INCOME DID NOT ESCAPE TAXATION.

The interest value was taken into consideration in the sale price of the stock of the Wendell shareholders to the appellant. It was reflected in the sale price of the stock and resulted in a capital gains tax to the shareholders.

The interest income was received by the appellant bank as transferee on liquidation. It was income to appellant bank and was reportable, and reported, as income by such transferee.

LIQUIDATION OF WENDELL BANK, BEING THE EVENT ON WHICH THE COMMISSIONER RELIES, DOES NOT JUSTIFY THE COMMISSIONER IN ACCRUING THE INTEREST INCOME TO WENDELL BANK.

Interest income of Wendell bank was a recurring substantial classification of income consistently han-

dled in the accounting system of the bank for many years on a cash receipts and disbursements basis. The interest income sought to be accrued by the commissioner is clearly not income under that method of accounting.

There is no method of accounting which is exact at all times nor absolute in the determination of income. The best that can be obtained from any method of accounting is consistency together with the application of recognized accounting principles.

There should be general rules with respect to methods of accounting recognized by the federal income tax law upon which both the government and the taxpayer may rely, not subject to change at any time it may appear to the commissioner that a change will result in more tax for the government. The rules should not be changed to fit any particular instance. The change sought to be made by the commissioner in this case violates recognized accounting principles.

The acts of the commissioner ignore the principle of consistency and rely upon liquidation as the event which gives rise to the right to make the change. There is no authority in the statute to the commissioner to make a change solely because of liquidation.

The entire argument of the appellee amounts to an urging to the court to approve such broad powers in the commissioner as would authorize the commissioner upon liquidation to make any change in items which would result in the most tax for the government. Appellee's construction of the statute is not that the

commissioner should be given the authority to make changes in accounting methods as would clearly reflect income, but, rather, make changes in items of income or expense, in the books of the corporation, to clearly reflect the greatest possible income.

**THE CHANGE SOUGHT TO BE MADE BY THE COMMISSIONER
IS NOT A CHANGE OF METHOD.**

Here the commissioner seeks to accrue only interest income of a cash basis taxpayer. Such change is being made in a period which also includes income earned in former periods and received in the period disturbed by the commissioner. This results in a distortion of income in the period in which the change has been made. It results in bunching income into such period. The commissioner disregarded items of expense incurred but not paid and not deducted.

The appellee relies chiefly on three cases, namely, *United States v. Lynch*, 192 Fed. 2d 718; *Jud Plumbing and Heating Company v. Commissioner*, 153 Fed. 2d 681, and *Standard Paving Company v. Commissioner*, 190 Fed. 2d 330.

We fail to see any application of the *Lynch* case to the facts here. In the *Lynch* case, the corporation transferred apples as a dividend to its shareholders. There the court held the apples to be a dividend and as such earnings of the corporation and income to the shareholders.

The *Jud* and *Standard Paving* cases appear to us to be identical with each other in principle. It also

appears to us that in each such case there was the distinct flavor of liquidation to escape taxation.

The case before the court does not have that flavor.

Dated, Boise, Idaho,

October 27, 1958.

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